IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7530 of 2001
WITH
CIVIL APPLICATION NO. 1876 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TEXTILE LABOUR ASSOCIATION

Versus

AHMEDABAD JUPITER TEXTILE MILLS

Appearance:

MR DS VASAVADA for Petitioner No. 1
MR SHUKLA for NANAVATI & NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 21/04/2004

COMMON ORAL JUDGEMENT

1. With the consent of the learned counsel appearing for both the sides, the Special Civil Application, which is against the interim order is segregated from Special Civil Application No. 5088 of 2001, which as per Mr. Shukla, is against the final decision of the Industrial Court.

2. The main Special Civil Application is preferred by the petitioner for challenging the legality and validity of the interim order passed by the Labour Court in BIR Application No. 305 of 2000 and of the Industrial Court in Revision Application No. 4 of 2001. It was prayed by the petitioner herein before the Labour Court in the Application No. 305 of 2000 by interim application that the petitioner be allowed to be continued in service upto the age of 62 years. The Labour Court has ultimately not granted the said application as per order dated 24.01.2001 and the petitioner carried the matter in Revision before the Industrial Court, and as per the order dated 19.4.2001, the Industrial Court has vacated the stay and has directed the Labour Court to decide BIR Application No. 305 of 2000 within a period of 3 months. The petitioner, under this circumstances, has approached this Court. It may be stated that thereafter, since there was no stay, on 24.7.2001, the petitioner has been relieved from service.

3. Pending the main Special Civil Application, the petitioner has moved Civil Application to direct the respondent to pay all legal dues of Abdul Rahim Abdul Karim, who has attained the age of 60 years as on 24.12.2000, without prejudice the contentions in the main Special Civil Application.

4. I have heard Mr. Vasavada for the petitioner and Mr. Shukla for the respondent. It is the contention of the petitioner that the workman would be entitled to be continued in service upto the age of 62 years whereas as per the stand of the respondent, the respondent workman would be entitled to continue upto the age of 60 years. Therefore, so far as the continuation in service upto the age of 60 years is concerned, there is no dispute, and, therefore, merely because some dispute is raised and the matter is pending either before the Labour Court or before the higher Forum, the retiral dues of the workman, as if he retired at the age of 60 years, cannot be withheld. Normally, in the matter of payment or disbursement of retiral dues, with a view to see that the workman concerned can survive, the admitted dues should be paid without prejudice to the rights and contentions

in the pending proceedings. In the present case, when even as per the case of the respondent the workman would be entitled to continue upto the age of 60 years, no serious prejudice will be caused to the respondent if the retiral dues are paid to the concerned workman, as if he retired at the age of 60 years, keeping the dispute of continuation upto 62 years pending.

5. So far as the main Special Civil Application is concerned, the same is against the interim order passed by the Labour Court, and the Revision in the Industrial Court. Mr. Shukla, learned counsel appearing for the respondent submitted that the main BIR Application No. 305 of 2000 is pending. When the present petition is only against the interim order and when by efflux of time even the age of 62 years of the workman is also over, it will be for the petitioner to pursue the matter before the Labour Court in BIR Application No. 305 of 2000. If as an out come of the stay application, in case the labour court finds that the workman concerned would be entitled to continue in service upto 62 years, then the consequential orders can be passed at the final disposal. In the petition preferred by the petitioner, at this stage, such relief cannot be considered since it was only against the interim order and at the stage of injunction. Therefore, it appears that the Special Civil Application would not survive any more, and as such, it would be infructuous.

6. Under the above circumstances, I am of the view that the following directions shall meet with the ends of justice:

(i). The respondent shall pay the retiral dues to the concerned workman Abdul Rahim Abdul Karim on the basis as if he retired on attaining the age of 60 years and disbursement of the amount of retiral dues shall be paid within a period of six weeks from today.

(ii). It is clarified that the aforesaid disbursement and the payment shall be without prejudice to the rights and contentions of both the sides in the proceedings of BIR Application No. 305 of 2000.

(iii). The main Spl. C.A. No. 7530 of 2001 is disposed of as having become infructuous reserving right of both the sides to raise the contentions in accordance with law including for consequential orders in BIR Application No. 305 of 2000.

7. The Special Civil Application as well as the Civil Application are disposed of in terms of the above directions. No order as to costs.

[JAYANT PATEL, J.]

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